

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHEL TOLIVER,

Plaintiff,

-v.-

10 Civ. 5354 (DAB)
ADOPTION OF REPORT
AND RECOMMENDATION

OFFICE-DEPARTMENT OF CORRECTIONS NYC
ET AL.,

Defendants.

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DEBORAH A. BATTS, United States District Judge.

On July 9, 2013, the Court approved, adopted, and ratified the December 11, 2012 Report and Recommendation of United States Magistrate Judge James C. Francis IV (the "Report") in its entirety. The July 9, 2013 Order, on recommendation from the Report, DENIED Plaintiff's request for leave to amend the Complaint insofar as it sought to add as defendants the City of New York and C.O. Murrell, and GRANTED the request for leave to amend the Complaint insofar as it sought to add as a defendant C.O. Okvist. With respect to Defendants' Motion for Summary Judgment, the Order (1) GRANTED it to the extent that it related to the Department of Correction NYC and its Commissioner, Chief, and Warden; (2) GRANTED it on the Deliberate Indifference claim against Captain Phifer; (3) GRANTED it on the State law claims;

and (4) DENIED it on the Failure to Intercede claim against Captain Phifer. The Report, which was pending for almost seven months, was adopted after all Parties failed to object to it. More than two months after the Order's issuance, Plaintiff seeks to object to the Report.

"Within fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The District Court may adopt those portions of the Report to which no timely Objection has been made, so long as there is no clear error on the face of the record. Wilds v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). "[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision." Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008) (internal quotation marks omitted). This rule applies to pro se parties so long as the Magistrate Judge's Report "explicitly states that failure to object to the report within [fourteen] days will preclude appellate review and specifically cites 28 U.S.C. § 636(b)(1) and rules 72, 6(a) and

6(e) of the Federal Rules of Civil Procedure." Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989) (per curiam). Judge Francis's Report explicitly advised Parties of the procedure for filing Objections and warned that failure to file Objections would result in waiver and preclude appellate review. (Report at 32.)

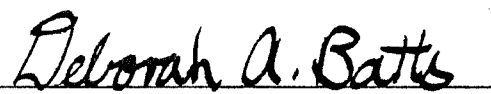
While Courts are permitted review on the merits matters already disposed of where good cause is demonstrated, see, e.g. Gonzales v. Scully, 1990 U.S. Dist. LEXIS 389 (S.D.N.Y. Jan. 12, 1990), good cause is lacking here. Plaintiff writes that his Objection was "mailed months ago," but gives neither proof nor even a precise date to substantiate the claim. (Pl.'s Letter at 3, Sept. 13, 2013.) Nor does Plaintiff allege that he failed to receive the December 11, 2012 Report and Recommendation, which provided instructions for filing objections and warned of consequences for failures to do so. The Court, therefore, does not find good cause to reopen the matter.

Plaintiff also requests time to amend the Complaint to reflect the July 9, 2013 Order and the December 11, 2012 Report and Recommendation. The Court GRANTS this request, and Plaintiff

is given 60 days from the date of this Order to amend the Complaint.

SO ORDERED.

Dated: October 18, 2013
New York, New York


Deborah A. Batts
United States District Judge